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## REMARKS/ARGUMENTS

Claims 1-48 are currently pending in the present application. Claims 1-12 and 34-48 were previously withdrawn without prejudice (leaving claims 13-33 for consideration). Claims 13, 15-19, 21, 22, 25, and 28 are amended. Claim 14 is canceled. Claims 49-65 are added. No new matter is added with the present amendments. Support for subject matter in any of the amended or newly added claims may be found in the specification and/or the drawings.

A personal Interview was conducted on May 1, 2006 at the U.S. Patent and Trademark Office. Applicants appreciate the opportunity to present arguments regarding the patentability of the pending claims and the consultation provided by the Examiner. Applicants also appreciate the Examiner's indication that certain disclosed limitations discussed at the Interview may render the claimed invention distinguishable over the cited art, if incorporated into the relevant independent claims. The Amendments submitted herein are consistent with those discussed with the Examiner at the Interview, and, thus, are believed to facilitate the examination of the application. Entry and consideration of these Amendments are respectfully requested.

Each of claims 1-33 is rejected under 35 U.S.C. §103(a) as being unpatentable over Toyoda in view of Guevara and/or Gibbs and/or Jarpenberg. Applicants respectfully traverses each of the rejections. To facilitate the examination and to highlight the Applicant's contribution to the art, certain claims are amended herein.

### Independent Claim 13

Independent claim 13 has been amended to recite a disposable garment with an elastic composite band having, among other elements, the following:

- a first side edge attached to said central body, a second side edge, and a composite centerline extending in a direction extending continuously between, and in generally parallel relation with, said side edges.
- an elastic construction...spaced inwardly from each side edge;
- wherein said elastic construction includes an arrangement of a plurality of spaced apart and independent elastic elements distributed along a direction extending between said side edges from a first elastic element in the arrangement to a last elastic element in the arrangement to form a

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substantially continuous, laterally elasticized region extending substantially continuously from a vicinity of said first elastic element through said last elastic element, said elastic elements being aligned in generally perpendicular relation with said composite centerline

Toyoda fails to teach, among other elements of amended claim 13, a *substantially continuous* elasticized region and elastic elements distributed along a direction that extends between the side edges. Instead, the central portion 12 of Toyoda requires a non-elasticized area (plastic deformable area “(a)”) between every pair of elastic (stretchable area “(b)”), thereby breaking any elastic continuity possibly attainable with an arrangement of the stretchable areas (b).

Toyoda also does not suggest the modification required by the invention because such a modification would be inconsistent with a primary objective of the Toyoda invention. In fact, such a modification would cancel the purpose or objective of the Toyoda invention. Specifically, an objective of the Toyoda invention is to provide “a disposable diaper that can be gathered at the waist...” (see column 1, lines 34-42). The disposable diaper is further designed to reveal elasticity at the fastening tape. Moreover, “[b]y virtue of the thus revealed elasticity, the gathers can be formed at the waist portion of the diaper where no gathers had existed before use.” To achieve the specific gathering or elastic feature desired by Toyoda, the design appears to require the elasticized or stretchable area to be “[b]ordered or alternated by plastic deformable areas (a).” In fact, the only embodiments described in the Toyoda patent are those constructions that include a fastening tape with a vertical arrangement of alternating (a) plastic deformable areas and (b) stretchable areas, thereby producing the gathered effect illustrated in FIG. 2. To change the central portion 12 of Toyoda into a substantially continuously elasticized region is therefore inconsistent with the purpose and objective of the invention.

Accordingly, any teaching or suggestion of a substantially continuous elasticized region as recited in claim 1, which can be found in any of the Jarpenberg, Guevara, or Gibbs reference, cannot be incorporated into the structure taught by the Toyoda, without destroying the purpose, if not the gist, of the invention. To suggest the combination of teachings as basis for an obviousness rejection is, therefore, impermissible.

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In any event, the teachings of Jarpenberg, Guevara, and Gibbs fail to include, individually or collectively, the teaching or suggestion of a substantially continuous laterally elasticized region, as recited in claim 13. In particular, Guevara does not teach or suggest a substantially continuous, laterally elasticized region formed by spaced apart elastic elements that are aligned in generally perpendicular relation with the composite centerline. The "composite centerline" of claim 13 is defined as extending in a direction extending continuously between a first side edge attached to the central body and a second side edge, and is in generally parallel relation with the side edges. In view of which edges are clearly "side edges" in Guevara, an equivalent "composite centerline" in Guevara would be aligned in *parallel* relation with the plurality of elastics. These elastic elements are, therefore, different from those of claim 13. Moreover, Guevara does not provide an elastic construction that is spaced inwardly from the side edges. Instead, the elastics of Guevara extend to at least one side edge common with the diaper.

Accordingly, any combination of these references with Toyoda fails to teach each and every element recited in claim 13.

In the alternative, none of the cited references individually or in any combination teaches or suggest the following claimed features of independent claim 13:

wherein said elastic elements are spaced inwardly from said side edges of said top and base layers to provide a non-elasticized region between said elasticized region and said side edges.

As discussed with the Examiner, Applicants believe that Toyoda does not teach such an elastic element(s). The ends of the elastic elements in Toyoda are covered either by the fastening means 11a or the body of the diaper. Uncovered, these elastics would extend all the way to the side edges. To terminate these elastics short of the side edges, according to the state of the art of relevant diaper manufacturing processes, would be costly, inefficient, and perhaps, impractical. Instead, by affixing the fastening means 11a or the body of the diaper over the elastic elements, the elasticity of the elastic elements is neutralized. This process is generally known and obvious to one skilled in this art. In fact, Applicants submit that this design of a non-elasticized region in a fastening composite having elastics directed in the cross-machine direction is one that is widely taught in the art. Laying a material over the elastic elements to neutralize the elastic, rather than

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cutting the ends, is relatively cost efficient and easily integrated into the diaper manufacturing process. These are primary objectives of any diaper design. Thus, the state of the art teaches away from claimed feature: wherein the elastic elements are spaced inwardly from the side edges to provide a non-elasticized region.

None of the cited references teaches this construction. Therefore, this construction is novel. It is also non-obvious in view of the prior art, including prior art diaper manufacturing processes, as the prior art generally teaches away or at least points toward alternate constructions. Claim 13 is allowable for this reason alone.

### Independent Claim 28

Amended claim 28 recites a disposable absorbent garment having a central body, side margins, and a pair of waist fastening portions. Claim 28 also recites an elasticized region positioned between first and second side edges of the waist fastening portions, and the following structural limitation:

wherein said elastic elements are spaced from said first side edge and from said central body to position the first non-elasticized region between said elasticized region and said central body.

In Toyoda, the elastic areas or materials extend at least to, if not into, the body of the diaper and thus, do not meet the spacing requirement of claim 28. Also, any first non-elasticized region appears to be within or co-extensive with the central body. Toyoda does not meet the position requirement of claim 28. Claim 28 is, therefore, novel in view of the cited references.

Furthermore, as discussed with the Examiner, the body of the Toyoda diaper must be affixed to or over the ends of the elastic materials, thereby neutralizing the elasticity of the covered portions. This construction feature is necessary to the Toyoda diaper fastener's construction and function. To eliminate this feature so as to arrive at the presently claimed invention is impermissible hindsight. It is also inconsistent with the contemplated design of Toyoda. The modification required of Toyoda by Claim 28 is, therefore, non-obvious.

Guevara does not cure the deficiencies of Toyoda because its elastics extend from one end edge to another end edge, and are not spaced from a first side edge and from a central body.

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Guevara also does not provide a non-elasticized region positioned between the central body and an elasticized region.

Accordingly, claim 28 is patentable over the cited references.

### Independent Claim 57

New independent claim 57 recites a garment characterized by another important structural feature of the invention discussed with the Examiner. A disposable absorbent garment according to the claimed invention includes an elastic composite band having an elastic construction with elastic elements being aligned in generally perpendicular relation with the composite centerline:

wherein at least a plurality of successive elastic elements in said distribution are discrete severed sections of one elasticized strand.

Toyoda may teach elastic elements aligned in generally perpendicular relation with the composite centerline (*i.e.*, cross-machine direction). Toyoda does not teach or suggest, however, that successive elastic elements are discrete severed sections of one elasticized strand. Applicants submit that the Toyoda elastics are individually provided and individually laid upon the composite substrate, as known in the art. None of the other cited references appears to help Toyoda or any of the other references in this respect.

Accordingly, claim 57 is patentable over the cited references.

### Independent Claim 62

New claim 62 recites a disposable absorbent garment including waist fastening portions having, among other elements, the following structural limitation:

- an elastic construction disposed between said top and base layers and spaced inwardly from each said side edge (of top and base layers), said elastic construction including a plurality of spaced apart elastic elements distributed in a direction between said side edges and in generally perpendicular relation with said fastening portion centerline
- wherein each fastening portion further includes,

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an elasticized region positioned between said first and second side edge and extending substantially continuously therebetween in a direction generally parallel with the fastening portion centerline, said elastic construction being disposed in said elasticized region, a first non-elasticized region positioned between said first side edge of said top and base layers and said elasticized region, and a second non-elasticized region positioned between said second side edge of said top and base layers and said elasticized region.

As discussed previously, Toyoda does not teach or suggest, among other elements, an elasticized region extending substantially continuously and in a direction generally parallel with the fastening portion centerline. Toyoda also does not teach or suggest the first or second non-elasticized regions that are positioned between the first or second side edges of the top and base layers and the elasticized region. The elastic areas of Toyoda are believed to extend to the side edges. This distinction was discussed previously with respect to claim 13.

Accordingly, claim 62 is patentable over the cited references.

### Dependent Claims/Features

New dependent claim 50 depends from claim 13 and further recites:

wherein each said elastic element is spaced from other said elastic elements in a direction parallel with said composite centerline and positioned relative to said composite centerline such that each said elastic element imparts a substantial lateral elasticity to said substantially continuous elasticized region.

Toyoda does not teach or suggest a substantially continuous laterally elasticized region, as discussed above with the base independent claim 13, whereto the elastic elements impart a substantially lateral elasticity. Guevara also does not teach or suggest such a substantially continuous laterally elasticized region or such spaced and positioned elastic elements. Guevara appears to provide a first set of elastics consisting of longitudinally-directed, closely spaced elastic elements. These elastic elements are not equivalent to the elastic elements defined by the claim, however. These elastics are not spaced from one another in a direction parallel with a composite centerline. Also, these elastics are not

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positioned in generally perpendicular relation to the centerline. It follows from the different positioning of these elastics that the Guevara elastics do not impart the substantial lateral elasticity further required by claim 50. As for the zig-zag elastic, it is not equivalent to any elastic element of claim 50. This elastic does not equate to a plurality of independent elastics and is not so directed or positioned to impart the desired lateral elasticity.

Accordingly, dependent claim 50 contains additional patentable subject matter.

New claim 52 depends from claim 13 and recites, among other elements, the following structural limitation:

said first side edge (of the composite band) is attached to said central body, wherein said first non-elasticized region consists of said first top layer and said base layer.

This structural limitation to the first non-elasticized region further defines the claimed construction away from the construction taught by Toyoda or Guevara. Applicants submits that any non-elasticized in Toyoda or Guevara necessarily includes more than a top and bottom layer. In FIG. 1 of Toyoda and FIG. 1 of Guevara, the regions depicted inward of the stretchable or elastic areas include a portion of the central body covering the fastening portion (*i.e.*, in addition to a top and a base layer). Applicants submit further that these regions include the extension of the elastic elements thereunder (which may or may not be elasticized due to the portion affixed to it). Thus, none of Toyoda, Guevara or any of the other cited references teaches or suggest the first non-elasticized region of claim 52.

Accordingly, claim 52 contains additional patentable subject matter.

New claim 53 depends from claim 28 and further recites the following limitation:

wherein each said elastic element is spaced from other said elastic elements in a direction parallel with said centerline and directed laterally toward said side edges such that said elastic elements are configured to impart tension restricted to the lateral direction relative to the centerline.

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This further structural limitation to the elastic elements and the elasticized region of claim 28 further defines the claimed construction away from the construction taught by Toyoda or Guevara. Again, Toyoda does not teach or suggest the substantial continuous elasticized region. Even if Guevara were able to cure this deficiency in Toyoda, the elastics of Guevara do not provide the remaining elements of the claim. As discussed previously, the plurality of elastics in Guevara do not meet the spacing or directional requirements of claim 53. As for the zig-zag elastic, it clearly has a substantial component directed toward the end edges rather than the side edges. Thus, it is not configured as claim 53 requires.

Accordingly, claim 53 contains additional patentable subject matter.

Each of the remaining claims has one or more of the elements described above and presented as distinguishing the claimed invention from the cited references. Accordingly, each of these remaining claims is patentable over the cited art for one or more of the reasons described above.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue.

A Petition for an Extension of Time for 2-Months is attached hereto. If another appropriate Petition is required, this statement shall serve as Applicants' Petition to the USPTO. The Commissioner is hereby authorized to charge any additional fees or credit any overpayments related to this response to Deposit Account No. 50-0997 (DSGI-1000US0), maintained by Paula D. Morris & Associates, P.C. d/b/a Morris & Amatong, P.C..

The undersigned is available for consultation at any time, if the Examiner believes such consultation may expedite the resolution of any issues.

Respectfully submitted,

Date:

06/27/2005

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